

Shan P. Massand  
 MCGUIREWOODS LLP  
 1251 Avenue of the Americas, 20<sup>th</sup> Floor  
 New York, New York 10020  
 (212) 548-2100  
*smassand@mcguirewoods.com*

*Attorneys for Defendant Bank of America, N.A.*

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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DAVE SHOSTACK,	:	Case No. 19-9162
	:	
Plaintiff,	:	(Removed from the Civil Court of
	:	the City of New York, County of
v.	:	New York, Index No. CV-025002-
	:	19/NY)
BANK OF AMERICA CORPORATION,	:	
	:	<b>NOTICE OF REMOVAL BY</b>
Defendant.	:	<b>DEFENDANT BANK OF</b>
	:	<b><u>AMERICA, N.A.</u></b>
-----	X	

**PLEASE TAKE NOTICE** that Defendant Bank of America, N.A. (“BANA”), erroneously sued herein as “Bank of America Corporation,” hereby removes the above-titled action from the Civil Court of the City of New York, County of New York, in which the action is currently pending, to the United States District Court for the Southern District of New York on the grounds that this Court has original and removal jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and all other applicable bases for removal. BANA states as follows in support of this notice:

**PLEADINGS AND FILINGS IN SUPREME COURT**

1. On or about September 24, 2019, Plaintiff Dave Shostack (“Plaintiff”) filed a Complaint in the Civil Court of the City of New York, County of New York (“New York County Civil Court”), captioned *Dave Shostack v. Bank of America Corporation*, bearing Index No. CV-

025002-19/NY. A true and correct copy of the Summons and Complaint filed by Plaintiff in the New York County Civil Court Action is attached hereto as Exhibit A.

2. On September 27, 2019, BANA was served with a copy of the Complaint.

### **TIMELINESS OF REMOVAL**

3. This action has not been previously removed to federal court.

4. This Notice of Removal is timely filed. Under 28 U.S.C. § 1446(b) the Notice of Removal may be filed within thirty days of receipt of the initial pleading setting forth the claim. Specifically, 28 U.S.C. § 1446(b), provides that the Notice of Removal is to be filed within thirty days of receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . .” BANA has filed this Notice of Removal within 30 days of the first date upon which it was served with any paper giving it knowledge that the action was removable, i.e., the Complaint.

### **ORIGINAL AND REMOVAL JURISDICTION**

5. In the New York County Civil Court Action, Plaintiff alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* (See Complaint ¶¶ 1, 5, 13-15.) Accordingly, the New York County Civil Court Action presents a federal question within the meaning of 28 U.S.C. § 1331, because it involves claims and/or issues arising in whole or in part under the Constitution, laws, or treaties of the United States. Therefore, this Court has original jurisdiction over the New York County Civil Court Action.

6. Under 28 U.S.C. § 1441 (a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

7. Plaintiff's Complaint presents a federal question for determination, i.e., whether BANA violated the TCPA. Accordingly, this case is a civil action over which this District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and is one which may be removed to this Court by BANA pursuant to 28 U.S.C. § 1441 *et seq.* in that it arises under Title VII. (*See generally* Exhibit A).

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a).

9. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon or otherwise received by BANA are attached hereto as Exhibit A.

10. In accordance with 28 U.S.C. § 1446(d), BANA will give prompt written notice of this Notice of Removal to all parties and to the Clerk of the New York County Civil Court. A copy of the Notice of Filing of Notice of Removal to the New York County Civil Court is attached hereto as Exhibit B.

11. By filing this Notice of Removal, BANA does not waive any defenses either procedural or substantive, which may be available to it, including, but not limited to, its right to contest *in personam* jurisdiction, improper service of process or the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, BANA removes the New York County Civil Court Action from the Civil Court of the City of New York, County of New York to the United States District Court for the Southern District of New York.

Dated: New York, New York  
October 2, 2019

Respectfully submitted,

/s/ Shan P. Massand  
Shan P. Massand  
MCGUIRE WOODS LLP  
1251 Avenue of the Americas, 20<sup>th</sup> Floor

New York, New York 10020  
Phone: (212) 548-2100  
Fax: (212) 548-2150  
smassand@mcguirewoods.com

*Attorneys for Defendant Bank of America, N.A.*

TO: Clerk of the Court

Dave Shostack  
4 Suttonwood Dr.  
Commack, NY 11725  
daveshostack@yahoo.com

*Self-Represented Plaintiff*

# EXHIBIT A

**Civil Court of the City of New York**  
**County of New York**

Index Number: **CV-025002-19/NY**



DAVE SHOSTACK

Plaintiff(s)

-against-

BANK OF AMERICA CORPORATION

Defendant(s)

**SUMMONS WITH ENDORSED  
COMPLAINT**

BASIS OF VENUE:

Where Cause of Action Arose

Plaintiff's Address (s) :

DAVE SHOSTACK  
4 SUTTONWOOD DR  
Commack, NY 11725

To the named defendant (s)

BANK OF AMERICA CORPORATION, at ONE BRYANT PARK, New York, NY 10036

**YOU ARE HEREBY SUMMONED** to appear in the Civil Court of the City of New York, County of New York at the office of the Clerk of the said Court at **111 Centre Street** in the **County of New York, City and State of New York**, within the time provided by law as noted below and to file your answer to the (endorsed summons) (annexed complaint) \* with the Clerk; upon your failure to answer, judgment will be taken against you for the total sum of \$25,000.00 and interest as detailed below. Plaintiff's work sheet may be attached for additional information if deemed necessary by the clerk.

Date: September 24, 2019

Alia Razzaq, Chief Clerk

**ENDORSED COMPLAINT**

The nature and the substance of the plaintiff's cause of action is as follows: **Other for \$25,000.00 with interest from 08/23/2019**

**VIOLATIONS OF TCPA ACT FROM 08/23/19**

**PLACE OF OCCURRENCE: COMMACK, NY**

**\*NOTE TO THE DEFENDANT**

*A) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within **TWENTY** days after such service; or*

*B) If the summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed **THIRTY** days after the proof of service thereof is filed with the Clerk of this Court within which to appear and answer.*

*C) Following CPLR 321(a) corporations must be represented by an attorney.*

**\* NOTE TO THE SERVER OF THE SUMMONS**

The person who serves the summons should complete the Affidavit of Service and shall file it in the Clerk's Office in the county where the action is brought.

**PLAINTIFF'S CERTIFICATION**

( See 22NYCRR, Section 130-1.1a)

SIGN NAME:

PRINT NAME:

*Dave Shostack*

DAVE SHOSTACK

For Information, answer forms and to track court dates, go to **WWW.NYCOURTS.GOV/NYCCIVIL**